IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1014 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NAIK JETHABHAI NARSINH

Versus

MAHMADBHAI HAJI GAFURBHAI

Appearance:

MR PV HATHI for Petitioner

MR SN SHELAT for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 28/07/2000

ORAL JUDGEMENT

1. The appellant - original plaintiff has filed this appeal u/s 96 of the Code of Civil Procedure, challenging the judgement and decree dated March 28, 1980 passed by the learned Civil Judge [S.D.] - Bhavnagar in Special Civil Suit No.62/1977, by which the suit filed by the

appellant for return of the earnest money alongwith interest came to be dismissed.

2. The respondents - original defendants had agreed to sell part of land of survey No.775 admeasuring 13 bighas 3 vasa, land of survey No.773 admeasuring 15 bighas 9 vasa and land of survey No.771/5 admeasuring 1 bigha. The price of land was fixed at Rs.1,40,000/-. The said agreement of sale was executed by the respondents in favour of the appellant on December 17, 1976. The appellant gave a draft dated December 16, 1976 for Rs.10,000/- to the respondents towards the earnest money. Condition No.6 of the agreement of sale was to the effect that if due to Government reasons if the land was not converted into non-agriculture purpose, the appellant was entitled to recover the earnest money from the respondents. The appellant managed to obtain signature of the respondents on the application for N.A. purpose. It was the appellant's case that the land could not be converted into non-agriculture purpose on account of default by the respondents. The appellant contended that the respondents had to obtain No Objection Certificate from Botad Municipality for converting the land for N.A. use and similarly, they were also liable to obtain N.O.C. from Town Planning Department. It was further contended that if the respondents would have taken proper care for proceeding with the N.A. case, then the lands would have been converted into N.A. purpose. It was further contended that as the lands were not converted into N.A. purpose, it was not possible to execute the agreement in favour of the appellant, and therefore, the respondents were informed that the agreement for sale dated December 17, 1976 had stood cancelled and the appellant was liable to recover the earnest money of Rs.10,000/-. As the respondents did not comply with the notice, the appellant filed Special Civil Suit No.62/1977 against the respondents for recovering Rs.11,500/- with running interest at the rate of 18% from the date of the suit till realisation.

3. The respondents filed their written statement at exh.15 inter alia contending that the suit was barred by principle of multifariousness and misjoinder of cause of action. It was pleaded that the measurement of lands agreed to be sold was wrongly mentioned by the appellant. It was averred that the agreement of sale was for the agriculture land and if the appellant wanted to convert the lands into N.A. purpose, he had to obtain the permission from the competent authority and the respondents were only to give their cooperation in the said proceedings. It was contended that there was no

default on part of the respondents for not getting the N.A. permission. The respondents averred that the N.A. permission which was sought for was not granted by the competent authority on technical reasons and for that, the respondents cannot be blamed. It was further averred that the respondents were not liable to obtain No Objection Certificate from Botad Municipality or Town Planning Department. It was further averred that the respondents were ready to act according to the terms of the agreement. The appellant did not show his willingness to cure the defects in the map which he had submitted for N.A. purpose. It was pleaded that the appellant had intentionally cancelled the agreement and had not taken any steps for converting the lands into N.A. purpose. It was further contended that the appellant had not supplied the required information to the Government for N.A. purpose, and therefore, it cannot be said that the Government had rejected the application filed by the appellant for converting the lands into N.A. use. The respondents came out with the case that in fact the appellant had purchased a big factory near Palitana after the agreement of sale and as he had invested big amount, it was not possible for him to get the sale deed executed by paying the full price for the purchase of the lands under agreement. It was contended that as the appellant had failed to perform his part of the agreement, the respondents were liable to forfeit the amount of earnest money and they were also liable to get the damages from the appellant. On the aforesaid facts and the reasons, the respondents prayed that the suit be dismissed with costs.

4. The learned trial Judge, on the assertion of the parties, framed issues at exh.21. The appellant was examined exh.36. In support of his case, appellant examined one Amrutlal Thakarshi Maru at exh.46. On behalf of the respondents, respondent No.1 was examined at exh.54 and another witness in support of the respondents' case, one Kantilal Girdharlal was examined at exh.56. Before the trial Court, both the parties led documentary evidence in the nature of agreement of sale, application for converting the land into N.A. purpose etc. The trial Court, after appreciating the oral as well as documentary evidence, deduced that agreement to sell lands as detailed in plaint was executed by the respondents in favour of the appellant on December 17, 1976, and the appellant had paid Rs.10,000/as earnest money on December 16, 1976. The trial Court further deduced that N.A. permission of the suit lands was not refused by the competent authority because the respondents had not cooperated with the appellant. It

was further deduced that N.A. permission was not refused due to any Government reasons, and therefore, the appellant was not entitled to recover Rs.10,000/- which was paid as earnest money to the respondents. The trial Court also deduced that the appellant was not entitled to cancel the agreement for sale and hence, he was not entitled to recover Rs.10,000/-. On the aforesaid conclusion, the trial Court dismissed the suit of the appellant, which has given rise to filing of this appeal by the original plaintiff.

5. Learned counsel for the appellant and learned counsel for the respondents have taken me through the entire record and proceedings. Learned counsel for the appellant has submitted that, as the respondents had not given cooperation and had not acted as per the terms of the agreement, the appellant was liable to cancel the agreement of sale and also entitled to recover Rs.10,000/- which was given as earnest money at the time of execution of agreement of sale dated December 17, 1976. Learned counsel for the appellant further submitted that, as per the condition No.6 of the agreement to sell, the application filed for converting the land for N.A. use, was rejected on account of Government reasons, and therefore, the appellant was entitled to recover the earnest money of Rs.10,000/-.

6. None of the contentions raised by the learned counsel for the appellant deserve any merit. The application filed by the appellant for converting the lands into N.A. use was rejected due to some technical reason as the appellant had not supplied the required information and No Objection Certificate before the competent authority was produced for getting the lands converted into N.A. use. The respondents had extended full cooperation to the appellant for getting the lands converted into N.A. use. On the contrary, the respondents had shown their willingness to get the sale deed executed, but the appellant had failed to perform his part of performance, and therefore, the trial Court had refused the relief for recovery of the earnest money. The reason why appellant was not willing to get the sale deed executed appears that he had invested huge amount in purchase of big plot for the establishment of a factory at Palitana. Having invested huge amount at Palitana, it was but natural that the appellant was not interested in getting the sale deed executed for the lands in dispute. For this obvious reason, the appellant had cancelled the agreement of sale and had filed the suit for recovery of earnest money. As the application for converting the lands into N.A. use was not rejected on Government

reasons, the appellant was not entitled to recover the earnest money of Rs.10,000/- from the respondents. In my opinion, the conclusion and findings arrived at by the trial Court are based on proper appreciation of evidence and it cannot be said that the judgement and decree of the trial Court suffer from any infirmity.

7. In the premises aforesaid, this appeal being meritless is dismissed with no orders as to costs.

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